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The result of modern conditions and of the inventions of our era which have constantly tended to bring about a further development of common service for the whole community has been the general establishment of great corporations which have had granted to them if not legal monopoly at least some special legal privileges. Indeed, we doubtless would have had these local monopolies as a result of the circumstances surrounding the supplying of these public necessities whether any special privileges were granted or not. These public service companies are certainly the most considerable factor in modern commercial affairs. The positive law of the public calling is the only protection that the public have in a situation such as this, where there is no competition among the sellers to operate in its favor. So much has our law been permeated with the theory of *laissez faire*, that the admission has been made with much hesitation that governmental control is ever necessary. But the modern conclusion, after some bitter experience, is that private control can be allowed where the conditions are those of virtual monopoly, only subject to strict regulation by the public authorities. We are now ready to go any length that is necessary to meet this situation. And the law which we are working out for the proper conduct of these utilities will be as useful in holding the public authorities themselves to a proper standard, as it is proving itself to be in keeping the private corporations engaged in public service up to the higher mark we are setting to-day.

As the problems of our modern civilization are most acute in the complex conditions which are to be found in our cities, this necessity for the extension of the sphere of governmental activity has naturally assumed the form of a demand for the municipal ownership and operation, or the adequate regulation and control, of what have come to be known as municipal public utilities.

The author is fundamentally in the right in assuming that the general law of public service applies equally well whether the community service is left in private hands or taken over by the governmental authorities. In fact the public authorities need expert regulation almost as much as the private managements, and the same method should be employed in the regulation of both. We should have a state commission duly empowered to deal with the municipal corporations in the conduct of their utilities along with the private corporations rendering the same service in other communities. This has not been seen clearly as yet, the city authorities very generally demanding the right to decide what is best for their people. But here as in other instances of uncontrolled management, there is a tendency to ignore just claims where there are conflicting interests, such as the respective rights of taxpayers and rate-payers. And public officials no less than private managers need the expert guidance of regulating bodies having a broader view than their own. It is well, therefore, to have such a book as this establishing by statements directly transposed from the comparatively few existing decisions, the essential unity of the law governing public utilities, whatever form that service may take without regard to the character of the organization rendering it. B. W.

THE RATIONALE OF PUNISHMENT. By Heinrich Oppenheimer. London: University of London Press. 1913. pp. vi, 327.

Not the least important aspect of conservation is the conservation of social institutions. One of the oldest of social institutions is punishment of crime. But many are arguing that the punishment of crime by the state is a relic of barbarism which should be eliminated in the society of to-day. For instance, an eminent member of the medical profession has told us recently that "The

whole problem is really a very simple one after all. It has been made needlessly complex and confusing because of the unconscious and hidden motives of the clans — *i. e.*, the legal and political clans. The formula of this latent content is, make a lot of fuss, kick up a terrible lot of dirt, call experts all kinds of bad names, frighten the people with all this hullabaloo, and in the meantime the unnecessary machinery created to take care of the artificially constructed panic will keep a vast amount of political patronage busy and idle at the same time; at the expense of the innocent, who believes himself in need of protection from a purely fictitious danger." In contrast with this offhand rejection of the whole matter of penal treatment as a means of protecting society, Dr. Oppenheimer has studied the theory of punishment with a view of determining its value as a social institution and of conserving it. At the outset he tells us that "the more extravagant claims of the criminological school threaten to subvert the very foundations of the rampart which society has laboriously erected against the onslaughts of crime." He suggests that there is danger "that the accumulated wisdom of thousands of years may be sacrificed, in a few years of revolutionary experiments, on the altar of a fashionable and self-complacent, withal utterly unverified, hypothesis."

The book is divided into two parts, the one dealing with the origin of punishment, the other with the philosophy of punishment. As a result of the historical inquiry and the exposition and critique of philosophical theories he comes to a conclusion with which probably every lawyer will agree: "that though punishment cannot be regarded as a panacea for crime it is a valuable means of social hygiene in the struggle against that disease of the body politic. Such efficacy as it possesses flows in the main from its character as an agent of prevention; and it discharges the functions of this office in two different ways: by appealing to the fears of persons likely to commit crimes and by operating upon the habitual sentiments of the citizens in general." (295) It ought not to be necessary to write so learned a book to justify such a conclusion. But the quotation at the outset, and much more of the same sort might be adduced, shows that there are many who believe that some single one of our modern inventions for the non-legal administrative treatment of offenders may be made to do the whole work.

An excellent bibliography, covering some ten pages, will make the book useful to the student. Unhappily there is no index. R. P.

A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE. By A. Esmein. (Being Vol. V of the Continental Legal History Series, published under the auspices of the Association of American Law Schools.) Boston: Little, Brown, and Company. 1913. pp. xlv, 640.

The translation of this work of Professor Adheimer Esmein, the foremost legal scholar of France if not of the world, places the legal profession under the greatest obligation to the editors of this series. At a time when the law's delays are justly claiming our attention, and when ignorance of the historical development of law is leading to many a foolish suggestion of reform, it is well for us all to read, in the graphic words of this master, the history of a well-considered attempt to simplify and hasten procedure. It may teach us, at least, to avoid the evils of lodging too great power in the hands of the administrative department.

M. Esmein's great work was written a generation ago, at the very beginning of his career. For this translation, he has entirely revised his earlier work, and has rewritten that portion which describes the parallel course of English criminal procedure in the light of the later work of Pollock and Maitland, Thayer,